

REMARKS

Applicant intends this response to be a complete response to the Examiner's 7 January 2004 Non-Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

Election/Restriction

Applicant expressly adopted the election requirement made telephonically.

Rejections Under 35 U.S.C. §112, ¶1

Claims 8-13 stand rejected under 35 U.S.C. § 112, ¶1 as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicants traverse and respectfully requests reconsideration based on the above claim amendments, if any, and the remarks presented herein.

Applicants have amended the claims to focus on the treatment characteristics of the medicament for the sake of expediting the prosecution of this case and expressly reserves the right to address the prevention issue in a continuation application. Applicants, therefore, respectfully request withdrawal of this section 112, first paragraph rejection.

Rejections Under 35 U.S.C. §103

Claims 8-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Derwent English abstract of Chinese Pat. Appl. No. 1089152 A (1994). Applicants traverse and respectfully request reconsideration based on the above claim amendments, if any, and the remarks presented herein.

Applicants has read the English abstract of CN '152 and do not fully agree with the Examiner's contentions. The abstract states as follows:

Onion product in the form of tablet, instant granules, capsule, powder, emulsion, etc. includes food, beverage, **health-care medicine**. prepared by adding **Chinese herbal medicines**, vegetables and food in pure onion product.
USE - It may be used to cure hyperlipemia, hypercholesterol, arteriosclerosis,

hypertension, arthritis, common cold, dysentery, rabies, diabetes, and baldness.

Applicant notes that medicine appears only in relationship to the Chinese herbal medicines or health-care medicines. Thus, to an ordinary artisan, CN '152 would clearly suggest that the product gains its medicinal properties not from the onion, but from the "health-care medicines" or "Chinese herbal medicines." There simply is no clear teaching that the onion is the responsible for the purported therapeutic benefits of the composition.

Moreover, the CN '152 reference does not require that the product be in a particulate form. The present invention is not only powdered, the particles of the powder must be of particular particle size distribution. Applicant has added additional claims to the specific *Allium* species and to specific particle size requirements.

Applicant, therefore, urges that the CN '152 reference is insufficient to support an obviousness rejection. This conclusion is also supported by the cited Plummer patent, which mentions onions only twice and is directed primarily to the anti-bacterial properties of garlic, where the extract is substantially free of allicin, a compound specifically articulated in the present application as being a potential anti-viral agent. Applicants, therefore, respectfully request withdrawal of this section 103 rejection.

Claims 8-11 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Derwent English abstract of Chinese Pat. Appl. No. 1161840 A (1997). Applicants traverse and respectfully requests reconsideration based on the above claim amendments, if any, and the remarks presented herein.

Applicants also disagree with the assessment of the CN '840 reference which reads as follows:

NOVELTY - The present invention relates to a medicine preparation for preventing and curing common cold and its preparation process. Its prescription is formed by using at least one of 19 Chinese medicines which possess the functions of resisting virus and raising immunity and can be used as medicinal material as well as edible material and at least one of 16 Chinese medicines which possess the functions of relieving exterior syndrome and invigorating qi, and at least one of the matching materials of tea, scallion,

white sugar and garlic. Said invented product can be made into packaged tea preparation, also can be made into powder preparation or capsule preparation.

The CN '840 reference does not include scallions as a medicine but as a "matching materials." In fact, the "matching materials" included with two ingredients that may have little or no medicinal properties tea (no specifics on the type) and white sugar. The CN '840 reference also makes no mention of the requirement that the scallion product must be powdered. Although Applicants do recognize that the entire preparation can be powdered (whether it has scallions in it or not). Thus, whatever the reason for the "matching materials," they are not considered to be one of the 19 Chinese medicines " which possess the functions of resisting virus and raising immunity." Thus, Applicants see no teaching in CN '840 to even suggest that scallions in and of themselves represent anti-viral agent.

Applicants, therefore, respectfully request withdrawal of this section 103 rejection.

Claims 8 and 10-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over CN '152 in view of US Pat. No. 5,705,152 (Plummer). Applicants traverse and respectfully request reconsideration based on the above claim amendments, if any, and the remarks presented herein.

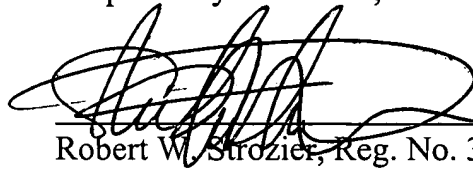
Based on the discussions above, Applicants do not believe that the combination of the CN '152 reference and the Plummer patent render the present invention obvious. First, as stated before, the CN '152 reference can be read as limiting the medicinal properties of the product to added health-care medicines or Chinese herbal medicines, *i.e.*, there is no direct teaching in the CN '152 reference that onion itself is the medicine.

Moreover, the Plummer patent only mentions anti-viral activity relying on evidence that diarrhea in young animals may be caused by viruses instead of bacteria, but the Plummer patent gives no data supporting its anti-viral claim. Thus, the combination of the CN '152 reference and the Plummer patent would not lead an ordinary artisan to find obvious that onion in and of itself is an antiviral agent for the common cold. Applicants, therefore, respectfully request withdrawal of this section 103 rejection.

Having fully responded to the Examiner's Non-Final Office Action, Applicant respectfully urges that is application be passed onto allowance.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert W. Strozier', is written over a horizontal line.

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Date: **June 21, 2004**